

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

EXPENSIFY, INC.,

Plaintiff,

v.

ABACUS LABS, INC.,

Defendant.

Civil Action No. 1:17-04157-JPO

Jury Trial Demanded

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF PLAINTIFF
EXPENSIFY, INC.'S OPPOSITION TO DEFENDANT ABACUS'S MOTION TO
DISMISS**

Plaintiff Expensify, Inc. ("Expensify") respectfully submits this Notice of Supplemental Authority in Support of its Opposition (Dkt. # 38) to Abacus' Motion to Dismiss (Dkt. # 33) for failure to state a claim for relief under Fed. R. Civ. Pro. 12(b)(6). After briefing for Abacus' motion to dismiss was complete, the Federal Circuit recently issued two controlling opinions regarding patent matter eligibility under 35 U.S.C. § 101: *Aatrix Software, Inc. v. Green Shades Software, Inc.*, No. 2017-1452, 2018 WL 843288 (Fed. Cir. Feb. 14, 2018) (attached as Exhibit A) and *Berkheimer v. HP Inc.*, No. 2017-1437, 2018 WL 774096 (Fed. Cir. Feb. 8, 2018) (attached as Exhibit B). Both opinions overrule the lower courts' findings of patent ineligibility as premature because factual issues existed.

Expensify respectfully asks the Court to take Notice of the Supplemental Authority attached hereto, so that the Court may consider the recently issued controlling Federal Circuit decisions.

Dated: February 15, 2018

Respectfully submitted,

By: /s/Steven C. Carlson

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CERTIFICATE OF SERVICE

I, Steven C. Carlson, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies shall be served by first class mail postage prepaid on all counsel who are not served through CM/ECF system on February 15, 2018.

/s/Steven C. Carlson
Steven C. Carlson